Supreme Court, U. S.
FILED
JUN 9 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1132

MICHAEL IRVIN CANON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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TO: The Honorable Chief Justice of the United States and the Honorable Associate Justices of the Supreme Court of the United States:

The Petitioner respectfully prays that this Petition for Rehearing for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit be considered.

REASONS FOR FILING PETITION FOR REHEARING

On February 10, 1976, the Petitioner Michael Irvin Canon, filed a Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit containing three questions presented to this Honorable Court (the writ of certiorari heretofore filed is incorporated herein by reference *in toto.*) The question herein presented was not included in the original petition for a writ of certiorari.

On May 24, 1976, this Honorable Court denied the petition for a writ of certiorari.

On January 8, 1976, the United States Court of Appeals for the Third Circuit filed an opinion in a case captioned *In the Matter of Grand Jury Empaneled January 21, 1975,* cited at 529 F.2d 543 (1976). The Third Circuit opinion deals with what sanction should be imposed upon a contemnor who initially refuses to comply with a court order which led to the finding of contempt. Counsel for Petitioner, being unaware of the Third Circuit opinion, did not include this question in the original petition for certiorari.

SUPPLEMENTAL QUESTION PRESENTED

1. Should the District Court who found the Petitioner in contempt have applied a more minimal degree of coercion to have gained compliance with its order.

STATUTE INVOLVED

28 U.S.C. § 1826(a) states as follows:

§ 1826. Recalcitrant witnesses

(a) Whenever a witness in any proceeding before or ancillary to any court or grand jury of the United States refuses without just cause shown to comply with an order of the court to testify or provide other information, including any book, paper, document, record, recording or other material, the court, upon such refusal, or when such refusal is duly brought to its attention, may summarily order his confinement at a suitable place until such time as the witness is willing to give such testimony or provide such information. No period of such confinement shall exceed the life of–

(1) the court proceeding, or

(2) the term of the grand jury, including extensions, before which such refusal to comply with the court order occurred, but in no event shall such confinement exceed eighteen months.

STATEMENT OF THE CASE

The Petitioner herein adopts and incorporates the Statement of the Case as contained in the original petition for a writ of certiorari filed February 10, 1976. In addition thereto, it should be noted that the Court stated:

> "The witness, MICHAEL IRVIN CANON, has wilfully disobeyed the lawful Orders of this Court and is in contempt of the Orders of this Court. The witness, MICHAEL IRVIN CANON, is hereby committed to the custody of the United States

Marshal until he purges himself of that contempt. Such confinement shall not extend beyond the term of the present Grand Jury."

REASON FOR GRANTING THE PETITION FOR REHEARING

I.

THE DISTRICT COURT WHO FOUND THE PETITIONER IN CONTEMPT SHOULD HAVE APPLIED A MORE MINIMAL DEGREE OF COERCION TO HAVE GAINED COMPLIANCE WITH ITS ORDER.

It is submitted that after adjudging Michael Irvin Canon to be in civil contempt, the Court should have fined him as a coercive sanction rather than to have imposed a term of incarceration to force compliance with its Order. Title 28 U.S.C. 1826(a) permits a coercive fine to be imposed on a contumacious witness. *Matter of Grand Jury Empaneled January 21, 1975*, 529 F.2d 543 (3rd Cir., 1976).

The District Court should apply the degree of coercion minimally necessary to gain compliance with its Order.

If compliance is not forthcoming, the original penalty could be increased, or a new penalty appropriate under the particular circumstances could be selected.

To have imposed the drastic sanction of incarceration under the peculiar circumstances facing Canon, said circumstances having been fully explored in the original petition for certiorari, is too severe of a penalty.

CONCLUSION

For the foregoing reason, it is respectfully submitted that this Petition for Rehearing be considered and a Writ of Certiorari issue to review the decision in this case in order to ascertain whether a more lenient sanction should have been imposed by the District Court on the Petitioner's original refusal to follow the Court's Order.

Respectfully submitted,

OSCAR B. GOODMAN, ESQ.

By /s/ Oscar B. Goodman
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Las Vegas, Nevada 89101
Telephone: (702) 384-5563
Attorney for Petitioner

CERTIFICATE OF COUNSEL

OSCAR B. GOODMAN, attorney for Petitioner MICHAEL IRVIN CANON, and duly admitted to practice before this Honorable Court, hereby certifies that this petition for rehearing is presented in good faith and is not presented for the purpose of delay.

It is further certified that the petition for rehearing is restricted to the question presented therein, which question presents a substantial ground available to Petitioner not previously presented, and which presents

to this Honorable Court a decision of a Circuit Court of Appeal which is of substantial effect.

/s/ Oscar B. Goodman
OSCAR B. GOODMAN

CERTIFICATE OF SERVICE BY MAILING

The undersigned hereby certifies that three (3) true and correct copies of the above and foregoing Petition for Rehearing for Writ of Certiorari was, on this 9th day of June, 1976, mailed, postage prepaid, to the Honorable Robert Bork, Solicitor General, United States Department of Justice, Washington, D. C. 20530.